



Department of Energy
Washington, DC 20585

September 24, 1999

Ms. Mary Lou Blazek
Spokesperson
Hanford Openness Workshops
4225 Roosevelt Way, NE, Suite 100
Seattle, WA 98105

Dear Ms. Blazek:

Let me reiterate the Department's appreciation for the positive contributions of the Hanford Openness Workshops and in particular for the recommendations in the Workshops final report dated summer 1998. We agree with a number of those recommendations and are already implementing them.

Enclosed are responses to each of your recommendations related to Department of Energy's Headquarters activities. As you are aware, Richland Operations Office responded to you separately on the recommendations to that office by letter dated December 21, 1998.

If you have any questions about the information contained in the enclosed responses, please feel free to contact Martha Crosland, Acting Director of the Office of Intergovernmental and Public Accountability, at (202) 586-5944

Sincerely,

A handwritten signature in cursive script, reading "Carolyn L. Huntoon".

Carolyn L. Huntoon
Assistant Secretary for
Environmental Management

Enclosure

cc:
M Crosland, EM-22
T. Tamura, MA-1
D. Michaels, EH-1
P. Marmolejos, ED-1
R. Gottemoeller, NN-1

Enclosure: DOE-HQ RESPONSES TO HANFORD OPENNESS WORKSHOPS REPORT

2-HQ: Include incentives for achieving openness goals and penalties for not achieving goals in contracts.

The Department of Energy has been engaged in a long term study of its use of performance incentives. As a result of lessons learned, all field offices, including the Richland Operations Office, have been cautioned to avoid the use of performance incentives with discrete fees associated with them for business, administrative and compliance issues. Discrete fee bearing activities must justify the amount of their fees as commensurate with the tangible benefits to the Government in reduced costs and/or improved schedule or other measurable advantages. Achieving openness goals can rarely meet that test. This does not, however, discredit their importance to DOE. Openness and responsiveness to community needs for access and information are important components of the award fee pool. The pool has been designed to allow the Fee Determining Official (FDO) to make a determination of an appropriate award fee amount based on his or her judgement. The FDO has flexibility in making that decision.

3-HQ: Create a standard contract clause stating that the six percent of fee for all projects to which a fee is attached may be withheld if information is not made available to the public and regulators for review in a timely manner to allow for informed participation in decision-making, and for notice to the public of major issues affected by such decisions.

See response to Recommendation 2. Based on the individual circumstances, pervasiveness and harm to the goals of the DOE and the community, the FDO can actually penalize a contractor more severely if circumstances warrant.

4-HQ: Add contract performance measures to give incentives to contractors who identify records relevant to pending decisions/projects, provide for access in a timely manner, and meet meaningful public involvement goals. Include failure penalties as a percentage of project fee.

See response to Recommendation 2.

5-HQ: Design early and comprehensive public comment processes, including meaningful early notice, use of advisory boards, and seeking input before internal decisions are made.

The Department of Energy's policy is to provide early and comprehensive public involvement processes so that Tribal Nations, state and local governments, stakeholders and the general public are notified of and can comment on proposed actions or decisions that the Department is contemplating. The Department is constantly looking for ways to improve public participation in its planning and decision making processes and welcomes specific suggestions for improvements. As part of its public participation program, the Department's Office of Environmental Management has worked with its field offices and stakeholders to set up Site Specific Advisory

Boards at a number of sites under the charter for the EM Site Specific Advisory Board. The local SSABs meet on a regular basis to exchange information and develop advice and recommendations to the Department.

6-HQ: Meet requirements for records access and notification, early disclosure of problems, safety issues, past releases, conflicting professional opinion, and other relevant information.

This recommendation appears to request that DOE Headquarters comply with existing statutes, orders, and policies. The Department believes it has an excellent, although not perfect, record for such compliance. The Department will address any specific concerns regarding such compliance that are brought to our attention.

7-HQ: Define adequate notice as "notice designed to inform someone reasonably desirous of notice of the impact to his or her interest(s), of the potential risks, or impact to values of stakeholders."

Although the Department's public involvement policy does not include a definition of the term adequate notice, the Department believes that the HOW's definition of the term is reasonable and represents the intent of the existing policy. The Department is implementing the spirit of this recommendation. Future revisions to the policy provide an opportunity to formalize this definition of "adequate notice."

8-HQ: Establish independent mechanisms for review of compliance with openness objectives. Guidance should require all sites to use an advisory panel.

We agree that it is important to evaluate the effectiveness of our public participation activities. Many sites such as Richland undertake such an evaluation annually. As stated in response to recommendation 5 above, the Department has established site specific advisory boards at a number of sites with EM activities.

See response to Recommendation 3

9-HQ: To ensure a retaliation-free workplace and zero tolerance of retaliation, have standard contract clauses for projects to lose all incentive fees and to receive a standard penalty for any adverse external adjudicatory finding of retaliation or discrimination.

All major site contracts contains the standard requirement in contract provision DEAR 970.5204-59 which makes 10 CFR Part 708 applicable. That Part contains criteria and procedures for the DOE Contractor Employee Protection Program and provides for remedies for such actions. Part 708 was modified in March of this year to broaden its eligibilities and affords additional protection to workers

10-HQ: Make regular declassification and release of records a part of all Department of Energy (DOE) contracts with operating contractors.

The Department of Energy Acquisition Regulation (DEAR) was revised to require declassification in all DOE contracts which involve classified information. The revised DEAR was published on October 3, 1977; effective December 1997. [48 CFR Part 952.204-70 Classification/Declassification]

11-HQ: Declassify and provide through contract language access to records relevant to environmental, safety and health concerns.

The Department of Energy does not classify now, nor has it classified since 1950, information concerning environmental, safety and health information. Information of this nature may be embedded in documents legitimately classified for other reasons. The document must then be sanitized prior to being released to the public.

12-HQ: Meet commitments to provide meaningful public involvement.

See response to Recommendation 5.

13-HQ: Require DOE management to promote a safety-conscious work environment.

DOE management at HQ and in the Field has implemented a number of recent actions to promote a more safety conscious environment such as the Integrated Safety Management System. Details about the status of the implementation are available on the following Web site:
<http://hls.oh.doe.gov/ism>

14-HQ: Suspend and/or revoke contracts if a contractor has engaged in whistle blower reprisals or maintained an environment hostile to employees reporting concerns.

10 CFR Part 708 provides the mechanism for taking appropriate actions to remedy cases when reprisals have been substantiated. In the event that a company engaged in a persistent and egregious pattern of reprisals which were duly substantiated, and for which a company did not take the appropriate remedial actions as it is obligated to do, the DOE would review its long term relationship with that company.

16-HQ: Address "hot spots" based on the investigative reports of the Labor Department and the news media accounts of reprisal - and where there may be a strong perception among employees that there will be a reprisal.

The Department of Energy's Headquarters Office of Employee concerns as well as that at the Department's Richland Operations Office have implemented this concern. These programs

review all activities involving alleged reprisals for potential "hot spots", regardless of the source of the information.

17-HQ: Provide training for supervisory employees and other workers by employee-concerns experts.

Training for supervisory employees is currently provided upon request. The Office of Personnel Management no longer requires that managers or supervisors take Supervisory Training. Many managers and supervisors at the Department have expressed a need for the training. The Department is re-evaluating the need for mandatory supervisory training and is currently developing a pilot for the training.

19-HQ: Develop effective employee communication avenues to be used to inform employees of their rights, to dispel rumors, and to provide factual information about proposed action or actions that have been taken.

The Department's Headquarters programs have many avenues of open communication with their employees including newsletters, bulletin boards, fact sheets and e-mail messages. The Office of Public Affairs at Headquarters distributes information to employees on a regular basis using the same methodology and each programmatic office has its own liaison office to ensure that all employees receive information of interest to them.

20-HQ: Institute a personal accountability rule to hold individual managers accountable for reprisals.

Managers currently are held accountable for intentional acts of reprisal. If the reprisal is associated with EEO-related activity, managers can be disciplined for their actions to the same extent as any employee who engages in misconduct. Similarly, utilizing different statutory authority, managers can also be disciplined if the reprisal results from an employee's whistle blowing activity. Enforcement of existing statutory and regulatory authorities regarding Federal and contractor employees are sufficient to address this recommendation.

21-HQ: Enhance the procedural rights of employees filing for whistle blower protection pursuant to 10 C.F.R. Part 708, and speed up response times.

10 C.F.R. Part 708 was modified in March of this year to broaden its eligibilities and affords additional protection to workers.

22-HQ: Establish Departmental policy prohibiting the institution or maintenance of a work environment that discourages employees from reporting health, safety, or environmental, or other employee concerns at DOE-owned sites.

A Departmental policy has been established. In his March 3, 1999, memorandum to all Department and Contractor Employees, on the subject, "Safety - Accountability and Performance," Secretary Richardson stated, "There must be open communication between management and employees and a zero tolerance for reprisals against those who raise safety concerns. Free and open expression of employee concerns is essential to safe and efficient accomplishment of the Department's mission." He then proceeded to outline actions to implement this policy.

(The Policy is reprinted in the response to Recommendation 28.)

23-HQ: Institute rules, procedures and regulations requiring DOE managers and supervisory personnel, as well as contractor and subcontractor employers, to maintain a work environment where employees are free to raise concerns without fear of reprisal.

See responses to Recommendations 14, 16 and 20.

24-HQ: Require the Department of Energy's Office of Oversight, Environment, Safety and Health, to ascertain, through its normal inspection duties, or upon request from the Office of Employee Concerns, whether a "chilling effect" on employee concerns exists at a specific facility, or within any DOE division, and to order corrective actions to remedy such environment.

The Office of Environment, Safety and Health's (EH) has met and continues to work with the Office of Employee Concerns, representatives of the Secretary's Office, and the Office of the Inspector General to clarify how best to address these issues. The objective is to define via EH's oversight and enforcement functions an appropriate role in supporting the investigative efforts of those offices. An agreement currently exists with the IG to support their investigative role on safety allegations, a role that EH plans to expand upon.

26-HQ: Develop expert resources to help establish and monitor effective performance indicators for measuring employee trust and confidence in management's ability to resolve employee concerns without fear of discrimination.

The Field Offices' employee concerns program together with the Department's oversight responsibility is used to gauge employee trust and confidence in the system. Further, enforcement of existing statutory and regulatory provisions against reprisals should be sufficient to restore trust and confidence.

27-HQ: Increase availability of health and environmental information by facilitating access to data for approved health and environmental studies.

The Department of Energy routinely updates its data on health and environmental studies and makes these available to interested parties and the public through newsletters, media information and its web sites.

28-HQ: Issue a policy statement consistent with these recommendations regarding employee climate issues and concerns, and distribute to employees annually.

The Secretary of Energy issued the following policy statement on March 4, 1999

MEMORANDUM TO ALL DEPARTMENT AND CONTRACTOR EMPLOYEES

FROM: BILL RICHARDSON
SECRETARY OF ENERGY

SUBJECT: Safety-Accountability and Performance

The Department of Energy (DOE) needs to strengthen its capabilities to protect the safety and health of people who work at and live near its facilities. While DOE's standards, technical competency, and operations are sound from a safety standpoint, the Department needs to improve how we oversee compliance with our requirements and, where deficiencies exist, ensure that managers are held accountable and that corrective actions are taken on a timely basis. A significant foundation has been laid over the past few years with the development of Integrated Safety Management (ISM) as the Department's corporate policy for environment, safety, and health. The ISM program now needs to go beyond its concepts and principles and establish the basic elements of meaningful oversight, enforcement, and accountability. We, therefore, will be adopting a number of safety enhancements over the next several months to address these needs.

Personal accountability for safety is key. This starts with workers and their unions and extends to contractor and Federal managers, Principal Secretarial Officers (PSOs), and ultimately to me. There must be open communication between management and employees and a zero tolerance policy for reprisals against those who raise safety concerns. Free and open expression of employee concerns is essential to safe and efficient accomplishment of the Department's missions. In order to achieve the goal of greater safety accountability, I will be taking a number of actions over the year. To begin, I am directing the following actions at this time.

o Put ISM in place by September 2000. I will expect all DOE sites to have verified that ISM systems are completely in place by September 2000. This should include integration of any other existing safety initiatives and programs (such as Voluntary Protection Program, WorkSmart Standards, Enhanced Work Planning, and International Standards Organization Programs). I expect line management to conduct periodic self assessments (DOE Policy 450.5, Line Environment, Safety and Health Oversight) of how it is meeting ISM implementation goals.

Additionally, I will look to the Office of Environment, Safety and Health (EH) to provide me with independent oversight of how line management is meeting its ISM commitments. Oversight findings, ratings, and trends will now be important in determining contractor and personnel performance reviews.

o Accountability through Contracts. The Department has completed a rulemaking that will help make certain that contractors fulfill the Department's ISM expectations and that excellence in safety performance is a matter of course. In March, the Department will publish revised DOE acquisition regulations in a final rule that, among other things, will hold a contractor's fee at risk in the event of poor safety performance. Coupled with contract reforms over the past year, ISM will be a central part of all of our contracts, from the request for proposal to the contract performance review.

o Timely Resolution of Safety Deficiencies. The EH Office of Oversight conducts independent evaluations of safety and emergency response, and outlines its findings and deficiencies. The Department, however, lacks an effective system for demonstrating that identified deficiencies have been corrected. We will take the following steps to improve our overall performance in this area:

(1) The Office of Oversight will immediately develop protocols that define the process for planning, scheduling, and conducting oversight evaluations.

(2) Action plans to correct identified deficiencies will be developed by the responsible manager within 60 days of the issuance of future oversight reports. In addition, I am concerned about the status of action plans for previously-issued oversight reports. Therefore, I am directing all offices to submit status reports within 60 days of the issuance of this memorandum on the actions taken to correct deficiencies identified in EH evaluation reports issued over the past year. Status reports should be forwarded to the Assistant Secretary for Environment, Safety and Health.

(3) We will develop a system within 60 days to track, follow through, and close corrective actions across the complex. The system will initially include responses to Oversight evaluations, accident investigations, and emergency response reviews. The system will also identify Federal senior managers and PSOs responsible for correcting and closing pending safety deficiencies. I have asked the EH Office of Oversight to give me regular independent assessments of how the Department is meeting these goals.

To enhance this effort, I also am requesting that each DOE site establish a regular forum for discussing safety performance with contractor and labor representatives. These fora should identify safety problems and issue early and ensure that they are resolved in a timely manner.

o Secretarial Safety Council. I am establishing a Secretarial Safety Council to be chaired by the Deputy Secretary and to include senior DOE Headquarters and field managers. The Council will provide the Department with leadership and guidance to meet ISM targets. Over the next 90 days, the Safety Council will develop performance standards that will be used to hold Federal personnel accountable for effective and timely ISM implementation. The Council will also work to establish systems for holding contractors accountable for ISM implementation. Also, the Council will have responsibility to ensure the Department has a viable and effective employee concerns program.

The already-established Safety Management Implementation Team and Department Standards Committee will provide regular reports to the Safety Council and will continue carrying out specific Department-wide ISM initiatives. EH will work closely with both organizations and will continue as the Department's leading advocate for protection of workers, public, and environment through policy, guidance, and technical expertise.

The success of the Department's safety initiative and Price-Anderson Enforcement Program depends on effective coordination between DOE field offices and the EH Office of Enforcement. Where field offices have been active participants in these programs, we have seen demonstrated improvements in safety. It is now time to achieve this level of success across the complex. I expect field office managers, with the support of the PSOs and in coordination with EH, to take the necessary steps to ensure that safety issues are promptly identified and resolved. In turn, EH will improve its ability to effectively oversee and evaluate our safety performance by strengthening its professional technical staff.

I will be holding all of you accountable for safety and the continued support of ISM. If I can leave you with one word, it is results.

29-HQ: Develop and employ a system, with input from stakeholders, for prioritization that will identify the types of material typically found in classes and types of documents, such as the location of radioactive or hazardous materials; disposition of such materials; releases to the environment; exposure of site employees or records that contain information on site accidents or incidents involving hazardous materials.

The Department of Energy has begun to implement this recommendation and one example is the Hanford Declassification Project (HDP). This project will rely on a set of keywords to search available bibliographic data on classified and declassified documents. All "hits" will be listed under each keyword. Notations will be made for documents that are declassified and publicly available. Document storage boxes containing these documents along with documents that remain classified will be reviewed for declassification to ensure that any related material not identified in the keyword search also is reviewed for declassification.

In the case of the HDP, the following keywords have been selected: Radioactive; Hazardous; Disposal; Releases; Environment; Exposure; Accidents; Incidents; Animal; Human; Tests; Criticalities; Occurrences; Dangerous; Biological; Chemical; Health; and, Abnormal. Documents identified via these key words will be made publicly available through the established system using the OpenNet database at <http://www.doe.gov/opennet>.

30-HQ: Limit the categories and numbers of newly classified records. Provide justification for all classification actions.

The Department of Energy (DOE) uses detailed classification guides for making determinations that information in documents or other media is classified. Limited categories of information subject to classification and classification justification are current requirements under the governing regulations.

Executive Order (E.O.) 12958, section 1.5, limits classification to seven specific categories of information. National Security Information that falls outside these seven categories cannot be classified. E.O. 12958, section 1.2 (b) states "if there is any significant doubt about the need to classify information it shall not be classified." Section 1.7 (a)(5) requires a concise reason be given for the original classification of the information.

Title 10, U.S. Code of Federal Regulations Part 1045 (10 CFR Part 1045), Nuclear Classification and Declassification, contains categories of nuclear information that can be presumed classified and those categories that may be presumed unclassified (10 CFR Part 1045.15). The regulation further requires that should there be significant doubt about the need to classify the information it should not be classified (10 CFR Part 1045.16). Accountability for classification and declassification decisions is addressed in 10 CFR Part 1045.19 of the regulation. The Directors of Declassification and Security Affairs are required to justify all classification and declassification determinations. Further accountability in the Restricted Data (RD) and Formerly Restricted Data (FRD) classification program is achieved through the publication of an annual report. The first report is currently in preparation and should be released to the public in the near future.

32-HQ: In addition to the above segregation, rank records, with stakeholder participation, for declassification and public release.

The Office of Declassification (OD) works with various stakeholder groups to identify their priorities. It reviews first for declassification and release those records identified as a high priority. At Headquarters, these groups represent primarily historians working through the National Archives and Records Administration (NARA). Furthermore, we concur with the Richland Operations Office comment regarding the segregation of written materials and records into five classes (Recommendation 31). Information in documents is either classified or not. There is no middle ground as is implied in Recommendation 31. Documents must be reviewed on an individual basis to ascertain whether or not they are currently and properly classified. The pitfalls of bulk classification are well documented. Such a broad brush approach has most

recently resulted in Congressional intervention at the NARA, requiring a page-by-page review of documents declassified under E.O. 12958 to prevent the inadvertent release of Richland Formerly Restricted Data (RD FRD). Any suggestion of bulk declassification of RD and FRD will be opposed by Headquarters.

35-HQ: Continue to budget for declassification of records and documents and give this activity a high priority.

The budget of the Office of Declassification has more than tripled since 1992 to the current (FY 1999) level of \$19.8 million. This increase has resulted in a great deal more information being declassified and released to the general public. The FY 2000 budget request contains a substantial (~ 35 percent) increase over the FY 1999 authorization.

44-HQ: Examine and incorporate technology that will aid in the identification and assessment of information contained in documents to allow better prioritization.

The Department is examining and incorporating technology that will assist in identifying and assessing information contained in documents to allow better prioritization. Some examples of this are: the OD project known as the Declassification Productivity Initiative has been an ongoing effort since 1995 to develop technologies that would assist document reviewers in the identification of classified information. Since 1995, the OD has invested about \$1.7 million a year in making such a system a reality. We continue to work with other Government agencies with similar needs in this area to leverage our internal funding. The national laboratories have provided high technology support to the office in this endeavor as well. The OD will keep the HOW abreast of progress in this area as we move forward.

See response to Recommendation 29.

45-HQ: Develop systems to read, index and categorize documents - so that it is easy to determine whether documents contain classified or restricted information.

See response to Recommendation 44.

46-HQ: Develop systems to perform "data mining" - looking for patterns of information relevant to a variety of searches.

The Department has developed a number of "data mining" systems that are currently in place. The Department also is in the process of implementing a number of other initiatives that will highlight patterns of information in this area.

47-HQ: Develop technical means to preserve physical documents and records as well as the content of the records.

The Office of Management and Evaluation provides records management support for all of the Office of Environmental Management Headquarters. Support includes the maintenance, storage and disposition of Federal records. Less-active records are maintained in a low-cost central facility where they are dispositioned and retrievable. Records are managed according to National Archives and Records Administration requirements. Each office is responsible for preparing a Records Inventory and Disposition Schedule (RIDS) and for ensuring the proper creation, maintenance and disposition to the central facility. Appropriate procedures are in place for maintaining classified records. No additional action is required.

51-HQ: Recognize and implement the government-to-government relationship between the United States and American Indian Tribes reflected in the DOE American Indian Policy.

The Department recognizes the government-to-government relationship between the United States and federally recognized American Indian tribes. This is reflected in the Department's American Indian Policy. The Department has announced its intent to review this policy in consultation with the tribes and to revise it as appropriate.